IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 1765 OF 2005

Phillip Menezes and anr. .. Petitioner.

Vs.

Ramchandra B. Dingle. .. Respondent.

Mr. D.A. Joseph i/by David and Associates for Petitioner.

Mr. A.G. Menon for Respondent.

CORAM :B.H. MARLAPALLE,J.

DATED : 11TH APRIL,2005.

P.C.:

1. Not on board. Upon mentioning taken on board.

2. Heard learned counsel for the petitioner. In S.C. Suit No.4170 of 1992 the defendant has filed an application Exh.58 on or about 17.3.2005 and prayed for recall of the plaintiff for his further cross examination. The said application has been rejected on 17.3.2005 itself and hence, this petition.

3. It is for the plaintiff to prove his case. As

some documents were not exhibited, the plaintiff would suffer. The points which could be examined in the oral argument are not required to be allowed to be agitated by way of such application. The learned Judge of the Trial Court was right to hold that the plea taken by the applicant was of duel nature and therefore, application came to be rejected.

4. No interference is called for in the discretion exercised by the Trial Court. However, it is clarified that by rejection of the said application the defendant is not estopped from raising the legal issues as raised in the application Exh.58.

5. Petition is rejected summarily subject to the above clarification.

(B.H.MARLAPALLE, J)